

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ROBERT DAVIS,	)	8:12CV107
	)	
Petitioner,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
STATE OF NEBRASKA,	)	
	)	
Respondent.	)	

This matter is before the court on initial review of Petitioner Robert Davis's Petition for Writ of Habeas Corpus ("Petition") filed pursuant to [28 U.S.C. § 2254](#). (Filing No. [1](#).) For the reasons discussed below, the court finds that Petitioner's claims are not cognizable in a federal habeas action.

Petitioner filed his Petition on March 15, 2012. He is incarcerated at a federal correctional institution in Sandstone, Minnesota. ([Docket Sheet](#).) Petitioner's allegations are difficult to decipher. As best as the court can tell, Petitioner alleges that his employer accused him of stealing various weapons, and he was subsequently charged with the theft of those weapons in the County Court of Washington County, Nebraska. These charges were ultimately dismissed. However, based on the factual predicate leading to the charges in state court, he was convicted of being a felon in possession of a firearm in federal court.<sup>1</sup> Petitioner complains that state law enforcement officers seized his family's weapons during their investigation, and have not returned them. As best as the court can tell, he asks this court to order state law enforcement officers to return his family's property. (Filing No. [1](#) at CM/ECF pp. 1-8.)

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<sup>1</sup>The court takes judicial notice of public records filed in the United States District Court for the Southern District of Iowa reflecting that Petitioner was sentenced to 120 months in prison on August 18, 2009, after a jury found him guilty of being a felon in possession of a firearm. *See USA v. Davis*, No. 4:10CV162 (S.D. Ia.).

Title 28 U.S.C. § 2254 permits a federal court to entertain only those applications alleging that a person is in state custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a). Here, Petitioner seeks to compel state law enforcement officers to return property to his family that was seized during a criminal investigation. In addition, it is clear from Petitioner's allegations that he is not in state custody, and he does not allege that he is being held in violation of the Constitution or laws or treaties of the United States. Petitioner's claims are not cognizable in a federal habeas action.

IT IS THEREFORE ORDERED that:

1. The Petition for Writ of Habeas Corpus (Filing No. 1) is dismissed.
2. A separate judgment will be entered in accordance with this Memorandum and Order.
3. Petitioner's Motion for Summons and Motion for Status (Filing Nos. 6 and 12) are denied as moot.

DATED this 28<sup>th</sup> day of August, 2012.

BY THE COURT:

s/ Joseph F. Bataillon  
United States District Judge

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